IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NOS. 125, 126 AND 127 OF 2006

CRIMINAL MISCELLANEOUS APPLICATION NO.125 OF 2006

Sertorio S. Facho,
Panjim. ... Applicant

versus

Dr. Fernando Jorge Colaso,
Panjim. ... Respondent

CRIMINAL MISCELLANEOUS APPLICATION NO.126 OF 2006

Sertorio S. Facho,
Panjim. ... Applicant

versus

Mr. Tarzan De Costa
and another. ... Respondents

CRIMINAL MISCELLANEOUS APPLICATION NO.127 OF 2006

Sertorio S. Facho,
Panjim. ... Applicant

versus

Mr. Caetano Pinho or
Caetano Sousa, Panjim. ... Respondent

Applicant in person.

CORAM : N. A. BRITTO, J.

DATE : 7TH APRIL, 2006.

ORAL ORDER

Heard the applicant in person.

2. The applicant was the plaintiff in R.C.S. No.528/2000/B in which respondent Dr. Fernando Jorge Colaso was defendant no.2, respondent Tarzan De Costa was defendant no.3(a) and respondent Caetano Pinho or Caetano Souza was defendant no.3(d).

3. The applicant had filed the said suit as regards a passage known as "Travessa De Escadinhas" claiming the same to be a public way and consequently challenging the orders dated 3-10-1985 and 16-10-1985 passed by the Land Survey Officer holding that the said passage was the property of defendant nos.3 and 4, etc. In the said Civil Suit, the defendant no.2/Dr. Fernando Jorge Colaso had filed a counterclaim. The said suit came to be dismissed with costs and the counterclaim filed by defendant no.2 came to be allowed by Judgment/Order dated

30-11-2001 against which the plaintiff filed no appeal as a result the Judgment/Decree have become final. The applicant/plaintiff was ordered to pay a sum of Rs.12,000/- by way of damages for making baseless and reckless allegations against the said defendant no.2/Dr. Fernando. After the said suit was dismissed and the counterclaim was allowed, the applicant/plaintiff instead of filing an appeal against the same filed applications dated 10-6-2002, 27-2-2002 and 9-7-2002 purporting to be applications filed under Section 340 of the Code of Criminal Procedure, 1973(Code, for short). The said applications came to be rejected by separate Orders dated 24-8-2005 of the learned Judicial Magistrate, First Class at Panaji. The applicant/plaintiff preferred appeals against the same to the learned Sessions Judge, Panaji and the learned Sessions Judge proceeded to dismiss the appeals filed by the applicant/plaintiff by Judgment/Order dated 30-11-2005.

4. The learned J.M.F.C., Panaji vide her Order dated 24-8-2005 observed that the allegation of the applicant/plaintiff did not disclose any offence under the law alleged to have been committed by the respondents and dismissed the said

applications. The learned Sessions Judge observed that the records of the said Civil Suit indicated that one Dometila Pinho had filed an application through one Ernesto De Souza for recording her name in the survey records of Chalta No.26 of P.T. Sheet No.44 of City Survey Panaji and the said Dr. Fernando Jorge Colaso who was representing the Panaji Municipal Council had endorsed his no objection on the said application as per the instructions of his client i.e. the defendant no.1(Panaji Municipal Council) and that the plaintiff had filed the said Civil Suit No.528/2000/B against the respondent merely because he had made the endorsement on the said application, whilst discharging his professional duties and had made several baseless allegations against him and after taking into consideration the evidence and after hearing both the parties, the learned Civil Judge had not only dismissed the suit but directed the plaintiff to pay to the respondent(defendant no.2) damages to the tune of Rs.12,000/- for making those baseless and reckless allegations and tarnishing his image and reputation. The learned Sessions Judge also observed that filing such frivolous applications amounted to wasting of valuable court

time and was also abuse of the process of the Court and proceeded to dismiss the appeals by imposing costs of Rs.1000/-.

5. There is absolutely no explanation from the applicant/plaintiff in case any of the respondents had given false evidence in the course of the trial of the said Civil Suit as to why he did not bring the said aspect to the notice of the Court before the disposal of the said R.C.S. No.528/2000/B and obtain appropriate orders. There is also no explanation from the applicant/plaintiff that in case he came across some other documents after the disposal of the said R.C.S. No.528/2000/B, as contended, as to why the applicant/plaintiff did not file an appeal with leave to produce the said additional documents. The very fact that the plaintiff's suit was dismissed and the counterclaim on defendant no.2 was allowed shows that the learned C.J.S.D. had not accepted the evidence produced on behalf of the plaintiff but on the contrary had accepted the evidence produced by defendant no.2. R.C.S. No.528/2000/B was not dismissed only because the Government was not a party to the said Civil Suit and in fact the learned C.J.S.D. had held that since the said passage was claimed as a public way

with the allegation that it was obstructed by defendant nos.3 and 4 the applicant/plaintiff as a member of the public had a cause of action for filing the suit. The applicant/plaintiff having not filed the application under Section 340 of the Code before the final disposal of the said Civil Suit it was certainly inexpedient and not in the interest of justice at all that the said application ought to have been entertained. It is to be noted that an application under Section 340 of the Code is entertained only when it is expedient and in the interest of justice that an inquiry should be held into any offence referred to in Clause (b) of Sub-Section(1) of Section 195 when it appears to have been committed in/or in relation to a proceeding in that Court or, such case may be, in respect of a document produced or given in evidence in proceeding in that Court. The applicant as plaintiff ought to have been vigilant in filing such application before the disposal of the said Civil Suit and the very fact that the applicant chose to remain silent till the Civil Suit was disposed and also chose not to assail the findings given in the said Civil Suit only shows that the applicant's applications are motivated. No case is made out for the interference of this Court with the orders of both the Courts below in its extraordinary jurisdiction

under Section 482 of the Code. Applications dismissed in limine.

N. A. BRITTO, J.

RD